

# Digital Property Tax & Online Learning

TRINA GRIFFIN, LEGISLATIVE ANALYSIS DIVISION  
REVENUE LAWS STUDY COMMITTEE  
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# ONLINE LEARNING



# The E-Learning Revolution



- The global e-learning industry will reach **\$325B** by 2025 – up from \$107B in 2015. US market expected to reach \$35B by 2022.
- Corporate training is the fastest growing segment of e-learning industry.
- Self-paced e-learning revenues estimated to be \$16 billion in 2021.
- Popularity due to low cost, ease of accessibility, a shift toward flexible education solutions, advantages of “animated”/interactive learning, prevalence of smartphone use.

# E-Learning in Education

- In 2015, 49% of students had taken an online course in the last 12 months.
- In 2017, 15% of US college students were enrolled entirely in online courses.
- 43% of US college students find digital learning technologies “extremely helpful.”
- E-learning enables students to learn 5x more material for every hour of studying or training.



# Corporate E-Learning



- 77% of US corporations use e-learning resources.
- Companies use e-learning in a variety of contexts:
  - Specific skill development
  - Health and safety training
  - Personnel issues and new employee onboarding
  - Industry trends and regulations
  - “Soft” skills, such as leadership, people management, problem-solving, collaboration, and communication
- Reduces training time, improves knowledge retention, increases productivity, appeals to modern workforce, and results in increased profits.

# Personal Development E-Learning





# General Principles

- There is no universally recognized definition of “digital products.”
- SSUTA has some definitions to which members must adhere, but states are not required to tax or align taxability with the definitions.
- Digital products are often comprised of a mix of TPP, intangible property, and digital services.
- Tax treatment varies widely across states.
  - 30 states tax digital products
  - 22 states tax streaming services
  - 17 states tax cloud computing or “software as a service”

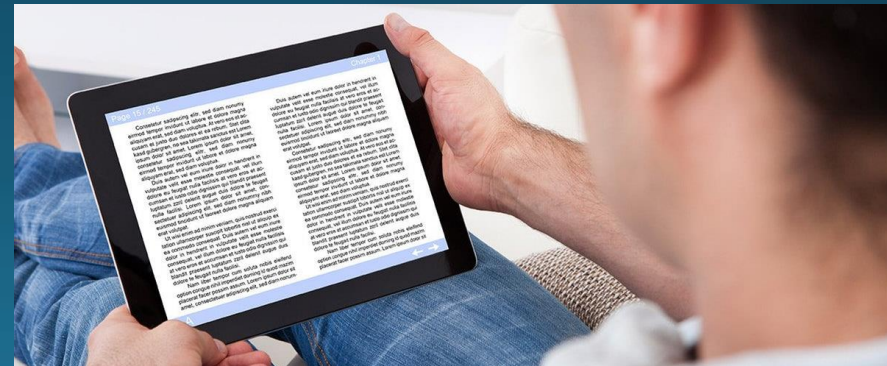
# Federal Landscape

- **(Permanent) Internet Tax Freedom Act (P-ITFA)**
  - Temporary moratorium in 1998; renewed 5x; made permanent in 2016.
  - Bans taxes on Internet access and multiple and discriminatory taxation of electronic commerce.
  - States can't tax an online version of a transaction if its similar offline version is not subject to tax.
- **Digital Goods and Services Tax Fairness Act**
- Federal guidance unlikely



# What Digital Property Does NC Tax?

- Delivered or accessed electronically; and
- Is one of the following:
  - Audio work
  - Audiovisual work
  - A book, magazine, newspaper, newsletter, report, or another publication
  - Photograph or greeting card
- Digital codes used to purchase any of these products.



# What Digital Property is Not Taxed in NC?

- Information Services
- Data Processing Services
- Software as a Service (SaaS)
- Video Game Services and Tournaments
- Storage of Electronic Files, Documents, or Records
- Finished artwork



# 2019 Expansion



- NC continued trend toward base expansion by expanding scope of digital property tax.
- Effective Oct. 1, 2019, digital property is not required to have a tangible corollary in order to be taxable (S.L. 2019-169).
- Must still be a specified digital product.
- As a result, certain e-learning materials consisting of access to online video catalog of continuing education courses are now taxable.



ONLINE  
LEARNING

The image features a Venn diagram with two overlapping circles on a dark blue background. The left circle, labeled 'ONLINE LEARNING', contains an illustration of a classroom with students at computers and a teacher at a whiteboard. The right circle, labeled 'DIGITAL PROPERTY', contains icons for a smartphone, a tablet, musical notes, a video camera, and a paint bucket. A large yellow arrow points upwards from the intersection of the two circles.

DIGITAL  
PROPERTY

# Scope of Expansion

- Questions emerged whether tax applied to online classes offered by schools and other types of continuing education-type webinars.



# What's the issue?

Live or recorded online courses/presentations may be accessed as “digital audiovisual works”



Digital audiovisual works are taxable.

**BUT**



Online courses provided by a school are more like nontaxable educational service than the sale of a digital good

In-person instructional seminars, conferences, or workshops for educational purposes are not subject to tax

# Online School Courses

## Other State Approaches:

- Option #1: Exempt online educational programs based on the provider:
  - Public or private elementary or secondary school
  - Institution of higher education (defined by federal law)
    - Public or private colleges or universities
    - Community colleges
    - Religious schools/seminaries
    - Proprietary schools
- Require that course be part of school's accreditation or be taken in pursuit of degree, license, or certificate.

# Online School Courses




## Option #2:

- Exempt online courses where 1 of the following factors is met:
  - Contemporaneous interaction between students/participants and instructor
  - Non-automated testing or evaluation by instructor
- This would also capture certain presentations that are not offered by a school.

# Other Online “Live” Presentations

- Most states exempt *in-person* attendance at live “educational” presentations.
- ITFA prohibits “discriminatory taxation” on ecommerce.
- To avoid violating ITFA, states exempt online viewing of these educational presentations.
- States take 2 approaches regarding exemption:
  - Narrow – Exempt online viewing only if ability to participate is substantially similar for in-person attendance.
  - Broad – Exempt online viewing of any type of real-time, live presentation if in-person attendance is not subject to tax, regardless of ability to participate.

# Examples

- Person purchases access to watch a continuing education course online, which is viewed in real-time. Person is able to submit questions to presenter through “chat” feature.  Not taxable under either approach.
- Person purchases access to watch a continuing education course online, which is viewed in real-time. Person is not able to submit questions to presenter.  Not taxable under broad approach; taxable under narrow approach.
- Person purchases access to watch a continuing education course online on-demand as a “video replay.” Course is not viewed in real-time and person cannot participate or ask questions.  Taxable under either approach.

# Policy Questions – “Must Do”

## 1. Clarify tax treatment of online classes provided by schools.

- By provider?
- Must course be part of school's accreditation or be taken in pursuit of degree, license, or certificate?
- Based on nature of product – i.e., “educational service” (instruction and evaluation) vs. a “digital good” (purely self-study video)?

## 2. Clarify tax treatment of other educational “live” presentations for which NC does not tax in-person attendance.

- At a minimum, should exempt online version when substantially similar to in-person attendance.
- Could enact a broader exemption.

# Policy Questions – “Could Do”

## 3. Any changes to current tax treatment of other types of pre-recorded digital audiovisual works?

- Under current law, all pre-recorded on-demand lectures, webinars, conferences, videos, regardless of whether educational or otherwise, are taxable digital goods.
- If so, what is basis for exemption?
- Factors to consider:
  - Treat similar transactions similarly
  - Objective criteria
  - Ease of administration

QUESTIONS?